

# Utility Consumers' Action Network

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September 16, 1994

94-105

William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M St. N.W.  
Washington D.C. 20554

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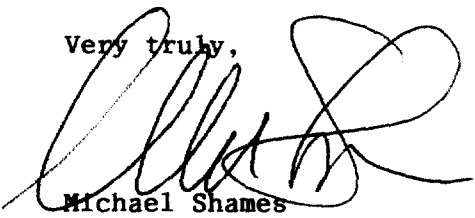
RE: ~~GN Docket No. 93-252~~

Dear Acting Secretary Caton:

UCAN offers for filing an original and four copies of its comments in response to the petition of the people of California to retain state regulatory authority over intrastate rates. Pursuant to the FCC's July 8th public notice, only four copies are being tendered. Moreover, as there is no service list at this point in the proceeding, UCAN has provided a copy to the state of California only.

Thank you for your attention to this filing request.

Very truly,

  
Michael Shames

On behalf of UCAN and TURN

No. of Copies rec'd  
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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

In the Matter of )

Implementation of Sections 3(n) and )  
322 of the Communications Act. )

Regulatory Treatment of Mobile Services )  
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GN Docket No. 94-252

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COMMENTS OF UCAN AND TURN  
IN SUPPORT OF PETITION OF THE STATE OF CALIFORNIA  
AND PUBLIC UTILITIES COMMISSION TO RETAIN STATE REGULATORY  
AUTHORITY OVER INTRASTATE CELLULAR SERVICE RATES

Utility Consumers' Action Network (UCAN) and Towards Utility Rate Normalization (TURN) are consumer groups based in the state of California. UCAN represents small business and residential customers in the San Diego County region. Many of UCAN's 41,000 members are users of cellular phones and have supported UCAN's three-year involvement in cellular carrier regulatory proceedings at the Public Utilities Commission. Similarly, TURN's 35,000 residential and small business members throughout the state of California are cellular phone customers and have supported TURN's long involvement in telecommunications advocacy before the Public Utilities Commission. Based upon our history of involvement in wireless regulation issues and our understanding of the sophisticated issues surrounding the wireless industry, UCAN and TURN strongly urge the FCC to allow the State of California and its Public Utilities Commission to retain state regulatory authority over intrastate cellular service for the following reasons:

- a. California's cellular rates are too high and existing market conditions have imposed unreasonable rates upon California customers;
- b. California suffers from inadequate competition, a condition that can be corrected only if the state's ratemaking authority is preserved; and
- c. California customers are extremely dissatisfied with cellular services.

For these reasons, as will be explained in greater depth below, both UCAN and TURN support the California Petition to Retain State Regulatory Authority (hereinafter referred to as "State Petition") and urge the FCC to grant the petition.

#### A. CELLULAR RATES ARE TOO HIGH

Current market conditions in California fail to adequately protect cellular customers from unreasonable rates. The State Petition describes the long history of regulatory proceedings which have conclusively established that the state's rates are too high. Today California customers pay substantially higher rates than subscribers throughout the rest of the country.<sup>1</sup> UCAN and TURN submit that this rate disparity is fueled, in part, by the very high demand for wireless services in California. This is a state that is notable for its reliance upon the automobile for transport. Transport is a major part of daily life for a disproportionately high number of Californians.

Accordingly, wireless services, uniquely, are well suited for the state's residents. This high demand has been met with limited supply, resulting in artificially high rates. The duopolist carriers in the state have spent more energy attempting to frustrate the entry of potential competitors rather than working to add additional capacity. To wit, the Public Utilities Commission docket of applications by cellular companies who wish to reduce margins of resellers or combat incursions of nascent ESMR competitors has been unending since 1991 when UCAN and TURN both entered the cellular issues.<sup>2</sup>

The chorus offered by cellular carriers attributes the state's persistently high rates to the CPUC's regulatory policies. In 1993, the CPUC called the "bluff" of the carriers and offered maximum regulatory flexibility. (State Petition, at p. 39) Following that decision, UCAN tracked the rates of the cellular carriers serving San Diego County. We found that -- over the past 15 months there has been a flurry of brief promotional offerings, but no

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<sup>1</sup>U.S. GAO, Telecommunications Cellular Service Competition, January 12, 1993 testimony before the California Senate Committee on Energy and Public Utilities, at p. 7.

<sup>2</sup> Most recently, Los Angeles Cellular has sought to offer customer specific contracts and not have to publish them until after the contract has been executed. This request was premised upon LA Cellular's intent to compete with ESMR services offered by Nextel. (App. 94-02-018)

sustained rate reductions of note. The pricing modus most common to carriers is to offer free minutes of time for new subscribers. There is no meaningful rate reduction for existing customers and no sustained rate reductions for new subscribers. Often, these promotions are either misleading or in violation of Commission regulations prohibiting discriminatory pricing.<sup>3</sup>

#### B. THERE IS INADEQUATE COMPETITION IN CALIFORNIA

UCAN and TURN support, in concept, the Commission's plan to promote competition in wireless services as the strategy for rate reduction. (State Petition, pgs. 63-78) As has been seen in the telecommunications, gas and electric industries, competition is often an effective means of realizing additional efficiencies and lower costs. The California Public Utilities Commission is uniquely capable of monitoring and nurturing the nascent competition opportunities presented by emerging ESMR and PCS services. These emerging services are not, yet, ready to challenge the carrier duopolies.

Absent continued rate regulation, California is likely to experience the rating strategies similar to the cable TV industry. In the years immediately leading to the Cable Consumer Protection Act of 1992, cable operators became aware of the emergence of direct satellite broadcasting and video dialtone competition, as well as the increasing probability of political backlash against persistently high rates. Their response was to boost rates even higher. On average, cable rates jumped 20-30% in San Diego County in the two years prior to the federal act.

In the absence of rate regulation, as emerging wireless technologies develop California's cellular duopolists will likely increase rates so as to capture excessive economic rents prior to the entrance of the competitors. At the same time, the companies will work to frustrate the entry of competitors through unfair pricing schemes. The California PUC has developed the understanding of California's unique market dynamics and the players in the market. To remove its ability to regulate rates is tantamount to opening the door to yet further rate increases and additional barriers to entry.

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<sup>3</sup> As noted by the Commission in its petition at page 40, UCAN brought a complaint against US West Cellular for abuse of promotional rates in April 1993. (C. 93-04-033) As 1994 draws to an end, US West has been able to use its resources to delay the hearing of the complaint and the Commission has yet to have an opportunity to rule of the case.

C. California Customers are Extremely Dissatisfied With Cellular Service

The entrance of UCAN and TURN into cellular issues in 1991 stands as clear evidence that California customers are unhappy with the persistently high rates and relatively inadequate service offered by cellular duopolists. UCAN's annual poll of members showed that cellular rates are an increasingly important issue as more of UCAN's members purchase cellular phones only to find that they can not afford to use them. Because UCAN and TURN are membership organizations, the allocation of our respective resources are based, in large part, upon the priorities established by the membership. Cellular rate relief is among our members' highest priorities.

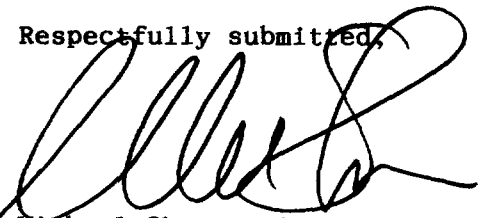
This dissatisfaction is demonstrated in yet other ways. For example, a review of carrier's "churn" rates will show that there is an unusually high degree of customer terminations in California.<sup>4</sup> A comparison of churn rates for other states will likely show that California's customer "defections" are higher.

UCAN and TURN also believe that a independent review of newspaper articles in California papers would show that there are an increasing number of articles critical of persistently high cellular rates.

For these reasons, UCAN urges the FCC to grant the state of California's petition to retain regulatory authority.

Respectfully submitted,

Date: September 15, 1994



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<sup>4</sup>In the US West cellular complaint brought by UCAN, the evidence shows that US West has experience monthly churn rates of 3% consistently. This translates to a loss of almost 50% of the company's customers each year. Evidently, it is more economic for US West to attract new customers than to lower rates and preserve customers. This policy can not be tolerated by regulators.

Gompers Habitat Restoration & Outdoor Science Lab Expense Budget					
Budget Item	Quantity/Area	Unit Cost	Total Cost	Grant Money	In-Kind
<b>Employee Services</b>					
SDUSD Site Adm	500 hours	\$29/hr	\$14,500		\$14,500
Gompers Curr Coordinator	300 hours	\$22/hr	\$6,600	\$3,300	\$3,300
EHC Coordinator	500 hours	\$30/hr	\$15,000	\$15,000	
Newsletter dup/distr	4 issues	\$125/issue	\$500	\$500	
<b>Site Investigation</b>					
Groundwater			\$1,500	\$1,500	
Archaeology Survey			\$1,200	\$1,200	
Hazardous Waste Survey			\$1,200	\$1,200	
Resource Protection Ordinance Survey			\$2,400	\$2,400	
Construction Drawings			\$18,000	\$17,200	\$1,800
<b>Site Preparation</b>					
AC Walk Removal	9000 sf	1.00/sf	\$9,000	\$9,000	
Power Pole Removal	3 150 ea.		\$450	\$450	
Concrete slab removal	455 sf	1.25 sf	\$570	\$570	
Site Clearing	4 acres	550/acre	\$2,200	\$2,200	
Wall Removal	260 sf	2.50/sf	\$650	\$650	
<b>Earth work</b>					
Rough Grading	3500 cu yd	\$1.50/cu yd	\$5,250	\$5,250	
Finish grade	1,500 cu yd	\$1.50/cu yd	\$2,250	\$2,250	
<b>Site Improvements</b>					
8' pathway (DG)	7680 sf	\$2/sf	\$15,360	\$15,360	
Amphitheater	450 sf	\$10/sf	\$4,500	\$4,500	
Bridge/Deck	400 sf	\$10/sf	\$4,000	\$4,000	
Wetland ond System	3,800 sf		\$20,000	\$20,000	
Lighting	30 150 ea.		\$4,500	\$4,500	
Water mainline	920 lf	\$5/lf	\$4,600	\$4,600	
Technology center	4000 sf	\$30/sf	\$120,000	\$30,000	\$90,000
<b>Planting/Irrigation</b>					
Drip Irrigation system	1		\$10,000	\$10,000	
Coastal Sage Scrub/Chap.					
Seed	71,000 sf	\$0.05/sf	\$3,550	\$2,550	\$1,000
Container Stock	1000 1-gal	\$6/ea	\$6,000	\$6,000	
Garden - soil amendments	400 sf	\$0.03/sf	\$12	\$12	
Wetlands	13,500 sf	\$0.60/sf	\$8,100	\$8,100	
Upland					
Irrig/understory planting	17500 sf	\$0.60/sf	\$10,500	\$9,500	\$1,000
Trees	80 24" boxed	\$150/ea	\$12,000	\$12,000	
Berms	21,780 sf	\$0.50 sf	\$10,890	\$9,890	\$1,000
Technology Ctr	1000 sf	\$0.35/sf	\$350	\$350	
<b>TOTAL</b>			<b>\$315,632</b>	<b>\$204,032</b>	<b>\$112,600</b>

Note: This is the budget that was submitted to the State Resources Agency. A more detailed budget will be available soon once the final architectural and landscape drawings have been completed.